EDUCATION OFFICE,

Bangalore.

4th September 1918

IMMEDIATE & STRICTLY

CONFIDENTIAL.

D.O. No.17.
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State Archives Collections No. 6 Box 6

My dear D'Souza,

In continuation of my D.O.No.15 dated the
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8nd instant, I beg to invite respectfully the attention of Government to the extraordinary situation created by the action of the District Judge in prohibiting the Trust Board from acting on its proceedings with respect to the retirement of the present Head Master.

The question under consideration does not fall under the category of questions which are subjudice, and on which comment ~~opinion~~ would be improper because though it is the action of a Judge, it is not a judicial act. There was no petition before him nor ~~purpose~~ parties nor Counsel. He was acting in virtue of the administrative powers with which he was, or he presumed he was, invested by the constitution governing the administration of Narimallappa's charities. Indeed as will be shown presently, if the implication of his present action is upheld, then he would become/much the executive head of that institution that he would have to be under the control of the Department as any Manager of an Aided institution. The constitutional and legal questions involved may be thus summarised:-

~~1~~ The management of aided institutions is generally in full control of appointments and retirements in such institutions, and so long as the proceedings of the Trust Board are regular and within the competence

In this capacity

Subject to the General Control & Guiding hie Department can lay down qualifications & insist on incompetent members being discharged

competence as defined by the Decree constituting the Board and the general usage of aided institutions, no outside body could interfere. If the Trust Board's decisions could be set aside by the District Judge or if an indefinite injunction staying their action could be issued, it raises the question who is the real executive head of the Marimallappa's Charities, the Trust Board or the District Judge. It is clear that the Department has a vital interest in the solution of this problem as it should know with whom it should correspond and who should draw the money.

If the present position of the District Judge is held to be valid, then the Trust Board becomes merely an advisory body which it is not worth while to deal with; and the District Judge becomes the aided agent, which does not seem to me to be appropriate in the -- nature of things or justifiable under the Decree and the Constitution.

Under the existing practice and the practice that has prevailed up till now, the Trust Board was regarded and treated uniformly as the executive head of the institution. The Secretary draws the grant, and the Secretary is the Secretary of the Trust Board and not of the District Judge. Government and the Department have in all important matters concerning the institution corresponded with the Department President of the Trust Board and not with the District Judge. It seems, therefore, a perfectly valid statement to make that up till now the Trust Board ~~was regarded as~~ occupied the position of the executive body.

which amounts to a veto

If ~~emmt~~ as the Judge apparently now presumes,

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he is held to be the effective exec tive, it is obvious that this cannot be in consonance with the whole theory of an Aided agency. The aided agency is a private agency and though that officials may serve on such agencies, they do so in their private capacity. Thereas the Judge can only act ex-officio. An Ex-officio aided agency is almost a vexatio ~~the~~ ..... ad absurdum.

The Decree and the constitution have clearly specified the powers of the Judge. For instance, he appoints the President; the confirmation of members proposed to fill up vacancies is in his hands, and he has to see that the proceedings of the body are regular and within their competence. If he must quash the proceedings, it must be on the ground of irregularity, such as want of a forum or incompetence. And these are the usual and normal ways in which judges control the affairs of trusts. To give go beyond the limits of purely judicial functions is and to put oneself in a somewhat difficult and delicate position.

In the inunction or what amounts to it, two grounds are advanced, neither of which have anything to do with the question regularity or competence. - The first is a D.O. written by Government-which, let me add, was never communicated to the Department and I have no doubt that this ground is of some weight though as pointed out above it can not legally warrant interference. The second ground is that certain member of the Trust Board did not concur with the majority. The Judge cannot, it seems to me, go behind the majority who are expressly vested with the power of acting for the entire body. In fact, if the majority rule

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rule is set at nought, ~~then the~~ procedure by committees, assemblies, and all such numerous bodies becomes an impossibility. Considering what large powers the District Judge has in settling the composition of the Trust Board, if this further power of interfering with them whenever they happen to fall short of unanimity is conceded, the Trust Board would sink into nothingness. Going behind the majority is to go against the constitution and constitutional methods in general.

The situation becomes much more perplexing when it is remembered that ~~its kindarty with~~ the notice of 3 months to the Head Master ~~of~~ was given so early as June last and no objection was ~~raised to~~ taken ~~that part of the proceedings~~ by the District Judge to who. the proceedings must as usual have been sent. So it must be held that he approved of or agreed to or acquiesced in the proceedings which gave the notice of termination of service to the present Head Master. Having done that it is not clear on what ground he could now interfere; and in fact, he hardly gives any reasons for his action.

If the contention is that the Trust Board was wrongfully dismissing an official who had a definite contract with them, even then the Judge could not interfere; for wrongful dismissal there is the law of contract and the penalty of damages and nothing more. He could not insist on the man being kept in the service.

That strikes the laymen, and I speak purely as a laymen,is/ that the Judge should have gone out of his way to stay the hand of the Trust Board when it was acting, so far as one could judge, within its undoubted powers and to have kept quiet when the Trust Board seemed to stray beyond its competence when it proposed to give

does in the best interests of the institution

give a pension of Rs.50 to the retiring Head Master. It is doubtful if Trust funds could be diverted for any other purposes except those for which they were given. It is doubtful if the Trust Board could convert by their resolution a non-pensionable appointment, known to be non-pensionable, into a pensionable one. If it is held that the pension is given from the Departmental grant, again two puzzling questions arise: whether such a course is valid under the Grant-in-aid code, which does not recognise pensions as a form of expenditure for which aid could be given, and secondly whether the usual monthly grant is not to be treated as part of the general revenue of the Trust to be spent under the same condition as the income from its own endowments.

What the Department is keen about is to know who is the aided agency, the District Judge as he has practically set himself up to be by the action under review, or the Trust Board which all held to be the competitive executive for appointments, the retirements which are not included under the powers specifically assigned to the Judge.

I, therefore, request that Government may be pleased to move the Chief Court to call for the papers, the Decree and the other documents bearing on the constitution of the Marimallappa's Charities, the proceedings of the Trust Board, the injunction or what amounts to it, issued by the Judge, etc., and to decide whether the judge has or has not gone beyond his competence in the present instance; and whether in their learned opinion the Trust Board is or is not the executive with definite powers, in which --

appointments and retirements are included, supreme so long as it does not go beyond its legal competence. Even if the Trust Board is not prepared for any reason to appeal to the Chief a reference like this would be necessary for the sake of departmental administration.

The reduction of the Trust Board to a mere Advisory Body would remove all chances of stability of administration, which is so desirable, in as much as it would make a judge (an individual, and judges keep changing) the supreme authority.

I may add that even if it is held that the Judge is the real executive and is in charge of appointments and retirements, it does not affect the action proposed in my D.O. No.15 dated the 2nd instant; because even if the Judge should hold that the present Head Master is fit to be continued, that does not constitute a technical obstacle to the Department holding a different opinion. When a Trust Board presided over by so honoured an educational authority, and authoritative an educationist as Mr. Denham has pronounced him to be incompetent, more weight would naturally be attached to the Board's judgment than to that of the District Judge. Moreover, in this particular case, there does not seem to be much room for difference of opinion and it would be strange indeed if anybody should hold that considering his age, qualification, manifold occupations, etc., not to speak of the irregularities recently brought to light and the deplorable state of the school in regard to both teaching and discipline, the retention of the present Head Master could be justified on any principle.

In case Government accede to my requestion, the present communication too may be referred to the Hon'ble Chief Court so that the views of the Department may be taken into consideration.

Yours sincerely,

P.C.D'Souza, Esq., B.A.,B.L.,